

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 388 of 1991

in

SPECIAL CIVIL APPLICATION No 8400 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL Sd/-
and

MR.JUSTICE A.M.KAPADIA Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No :

MAGANBHAI K VANKAR

Versus

DIST. SOCIAL WELFARE OFFICER

Appearance:

MR MC BHATT for Appellant
MR MA BUKHARI, AGP for the State

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.M.KAPADIA

Date of decision: 10/02/2000

ORAL JUDGEMENT

(Per : Panchal, J.)

This appeal, which is filed under Clause 15 of the Letters Patent, is directed against judgment dated November 25, 1991 rendered by the learned Single Judge, in Special Civil Application No. 8400/91, by which prayer made by the appellant to direct the respondents to treat him as a regularly employed watchman since January 8, 1990 and pay regular wages on that basis, is rejected.

2. The appellant was appointed as a daily wager watchman by Warden, Government Kumar Chhatralay, Modasa. According to the appellant, he had passed Std.VII examination and is eligible for being appointed as a watchman. The appellant claimed in the petition that the Director, Social Welfare Department had sanctioned the wages payable to him from January 8, 1990 till the date of filing of the petition, but the appellant could not produce any such sanctioning order in support of the averments made in the petition. The grievance made by the appellant in the petition was that he had throughout worked for all the 7 days in a week and, therefore, artificial breaks which were given by the respondents in his service were illegal. Under the circumstances, he filed petition under Art. 226 of the Constitution and claimed the relief to which reference is made earlier.

3. The learned Single Judge has summarily dismissed the petition by judgment dated November 25, 1991, giving rise to present appeal.

4. The learned Counsel for the appellant submitted that artificial breaks in service given by the respondents were illegal and, therefore, the petition ought to have been entertained by the learned Single Judge. It was claimed that the appellant had worked for all the 7 days in a week without observing any holiday and, therefore, the respondents ought to have been directed to regularise the services of the appellant as a watchman since January 8, 1990 and pay regular wages to the appellant on that basis. What was stressed was that in similar matters, directions have been given by the High Court to regularise services of employees appointed on daily wages and, therefore, the appeal should be accepted.

5. We have heard the learned Counsel for the appellant and considered the documents which were

produced by the appellant along with the petition. It is an admitted position that the post of watchman was not sanctioned at Government Kanya Chhatralay when the appellant was appointed as a daily wager on January 8, 1990. Subsequently the post was sanctioned and as observed by the learned Single Judge in the impugned judgment, the respondents are following necessary legal procedure for making appointment to the post of watchman by holding interviews of eligible candidates. The nature of appointment of the appellant makes it manifest that his appointment was purely on ad hoc basis till the post of watchman was sanctioned and filled-up according to the procedure established by law. It is well settled that no one can be appointed to any post in violation of the recruitment rules because if this is permitted, the right of the eligible candidates would stand defeated and it would amount to giving backdoor entry into the service to some persons. Moreover, if persons appointed as daily wagers are ordered to be continued in service without following any procedure prescribed under the recruitment rules, it would render statutory rules nugatory. As the appellant was appointed as a watchman on daily wage basis, he had no right to claim appointment to the post and, therefore, we are of the opinion that the learned Single Judge did not commit any error in dismissing the petition. However, it is clarified that if recruitment to the post of watchman is to be made, it would be open to the appellant to make application for the same and the respondents shall consider the same in accordance with law.

The learned Counsel for the appellant has placed reliance on the decision of the Supreme Court rendered in the case of KESHAV NARAYAN GUPTA AND OTHERS v. JILA PARISHAD, SHIVPURI (MP) AND ANOTHER, (1998)9 SCC 78 for the purpose of seeking direction against the respondents to continue the appellant in service till regular recruitment to the post of watchman is made and pay him wages on that basis. In that case the appellant was appointed in the office of Zila Parishad, Shivpuri (MP) as a Lower Division Clerk temporarily and for a period of 30 days on June 5, 1985. This temporary appointment was continued after a short break for another 30 days and it was thereafter renewed with short breaks from time to time. Under a Circular dated October 1, 1984 issued by the Government of Madhya Pradesh Panchayat and Rural Development Department, 4 posts were sanctioned for District Panchayats in 29 districts except the district of Madhya Bharat. By another resolution dated January 22, 1987, 2 additional posts were sanctioned for the District Panchayats. As a result, six posts became

available to the District Panchayats. The appellant was continued to be ad hoc employee. Ultimately, a directive was issued that all the irregular appointments made in the District Panchayats should be cancelled. The appointments of two appellants were terminated by giving them three months' previous notice in accordance with Rule 150 of the Madhya Bharat Panchayat Rules. The rules required that sanction of the Collector should be obtained for giving regular appointment. It was found that no such sanction was given by the Collector. What was pleaded on behalf of the appellants before the Supreme Court was that there were no rules prescribing procedure for appointment to this post and the only requirement was that approval of the Collector should be obtained. Under the circumstances, the Supreme Court while upholding the decision of the High Court directed that "when regular appointments to the posts at present occupied by the appellants are made, the cases of the appellants should also be considered along with the other applicants by waiving the age bar and until such regular appointments are made, the appellants will continue to function on an ad hoc basis as of now." In our view, as observed by the learned Single Judge, process for recruiting the post of watchman was initiated as early as in the year 1991. Moreover, the directions which were given by the Supreme Court were purportedly given in exercise of powers under Article 142 of the Constitution. Therefore, the directions as sought for by the learned Counsel for the appellant as were given by the Supreme Court cannot be given in this case. On overall view of the matter, we are of the opinion that no error is committed by the learned Single Judge necessitating our interference in the present appeal. The appeal, therefore, cannot be allowed and is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed with no orders as to costs. Ad-interim relief granted earlier in Civil Application No. 2403/91 which was filed in Letters Patent Appeal No. 388/91 is hereby vacated.

(patel)